

No. 13-7034

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Andrea Peterson,
Plaintiff-Appellant

v.

Archstone/Archstone Communities LLC, et al
Defendant-Appellee

Appeal From The United States District Court
For The District of Columbia (D.D.C. No. 08-1326 (RWR))

APPELLANT BRIEF

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QUESTIONS TO BE DECIDED

1. Can pursuant to Fed. R. Civ. P. Rule 56(c), Fed. R. Civ P. Rule 56(e), Local Rule 7(h), and the Court's Schedule Order, Dkt. No. 38, defendant prevail in its Cross Motion for Summary Judgment, despite that defendant failed to meet the Legal Standards for the foregoing Rules?
2. Were the Legal Standards for Summary Judgment, set in Celotex Corp. v. Catrett, 477 US 317 - Supreme Court 1986, met when the district court granted defendant Archstone Communities et al Cross Motion for Summary Judgment.
3. Was the five (5) times appellant's Motion for Counsel was denied, despite that appellant meets the Poindexter Legal Standards, the reason appellant did not prevail in Summary Judgment.
4. Can summary judgment be granted when a party did not have full opportunity to obtain discovery.
 - A. The D.C. Court of Appeals April 15, 2011 opinion stated the dismissal of appellant's case was a harsh sanction. The court opinion cited, Bristol Petroleum Corp. v. Harris, 901 F. 2d 165, 167 (D.C. Cir. 1990), "Although we are "hesitant to type the exercise of a district court dismissal authority as an abuse of discretion, the court must "explain why the harsh sanction of dismissal was necessary under the circumstances of th[e] case." Accordingly, was the fact that following reversal and remand, the district court ordered that the parties state how appellant should be sanctioned a second time and defendant's motion, Dkt. No. 97, response requested the court "Enter an Order in favor of Defendant for all matters that were scheduled to be heard at the November 3, 2009 hearing", the court did not issue any orders on the discovery motions the court denied as moot when it dismissed appellant's case, the court did not issue any new discovery orders, and that the court and defendant's repeatedly stated, e.g., Dkt. No 131, "The discovery-related motions might have been resolved had Peterson appeared for a hearing on November 3, 2009 before Magistrate Judge Kay to whom the discovery dispute had been

referred”; reason to withhold discovery, an abuse of discretion, and as a result appellant is prejudiced, irreparably harmed.

5. Does by the fact that defendant intentionally withheld evidence; appellant meets Legal Standards for the court to Grant an adverse inference sanction, and enter default judgment for appellant?

CERTIFICATES AS TO PARTIES

The parties to this proceeding are set forth in the caption

RULINGS UNDER REVIEW

- A. Appellant Motion for Summary Judgment and all exhibits
- B. Appellant Reply Memorandum to Defendant Opposition to Plaintiff Motion for Summary Judgment and, Plaintiff Opposition Memorandum to Defendant Cross Motion for Summary Judgment
- C. All District Court motions and orders following the D.C. Court of Appeals, April 15, 2011 reversal and remand of Case No. 10-7012.
- D. Discovery Motions the District Court order of January 4, 2010 denied as Moot (57-59, 62, 65-67, 76-78, 80, 83) and, not listed on the dismissal order, but not heard, Dkt. Nos. 74 and 75.
- E. Defendant’s Motion to Dismiss, Dkt. No. 7.
- F. The District Court’s Schedule Order, Dkt. No. 38.
- G. Appellant Motions for Attorney, Dkt. Nos. 9, 32, 40, 104, 123, and on 3/07/13 in the D.C. Court of Appeals.
 - Dkt. No. 9, 9/29/08
 - Dkt. No. 32, 5/04/09
 - Dkt. No. 40, 06/10/09
 - Dkt. No. 104, 12/27/11
 - Dkt. No. 123, 06/08/12
- H. Transcript of November 3, 2009 Hearing
- I. Order Initial Schedule Conference (26)
- J. Peterson v. Archstone Communities et al, Case No. 10-7012, D.C. Court of Appeals

RELATED CASES

Peterson v. Archstone Communities et al, Case No. 10-7012 D.C. Court of Appeals

TABLE OF CONTENTS

Questions To Be Decided.....	i - ii
Certificate as to Parties, Rulings Under Review.....	ii
Related Cases.....	iii
Table of Contents.....	iii
Table of Authorities, Dkt. No. 109.1.....	iv to vi
Table of Authorities, Dkt. No. 127.....	vii - ix
Table of Authorities, Appellant Brief.....	x - xii
Glossary of Abbreviations.....	xiii
Jurisdictional Statement.....	xii
Statement of Issues.....	xiii
Statue and Regulations.....	xiii - xiv
Statement of the Facts/Argument.....	1 - 2
Conclusion.....	2

TABLE OF AUTHORITIES

MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT, DKT. 109-1

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).....	21, 49
Austral-Pacific Fertilizers v. Cooper Indus., 1997 U.S. App. LEXIS 5383 ((6 th Cir. 1997)	21, 32
Bowles v. Batson, 61 F. Supp. 839 (D.S.C.1945).....	43
Chambers v. Nasco, Inc., 501 U.S. 32, 45-46 (1991).....	21, 33
Chapman v. Pacific Telephone and Telegraph Co., 613 F.2d 193, 197 (9 th Cir. 1979).....	38
Chuang v. Univ. of Cal. Davis, Bd. of Trs., 225 F.3d 1115, 1127 (9th Cir. 2000).....	21, 22
Chuang, 225 F.3d at 1124.....	21, 52
Cine Forty-Second Theatre Corp., 602 F.2d at 1066.....	21, 39
Citing Teletron, Inc., v. Overhead Door Corp., 116 F.R.D. 107)	57
Columbia /HCA Healthcare Corporation Billing practices Litigation, 293 F.3d 289, 302 (6 th Cir. 2002)	21, 35
Connolly v. Pepsi Bottling Grp., LLC, 2009 WL 3154445 at *2-3.....	6, 52
Cosgrove v. Bartolotta, 150 F.3d 729, 732 (7th Cir. 1998).....	40
Costa v. Desert Palace, Inc., 299 F.3d 838, 855 (9th Cir. 2002)	6
Damiam MASSE, an infant, by his Guardian ad Litem, Woodrow G. Masse v. ANIMAL REPELLENTS, INC., 236 F.Supp. 69; 1964 U.S. Dist	41
e 11, 52	
Easton Sports, Inc. v. Warrior Lacrosse, Inc., 2006 U.S. Dist. LEXIS 70214 (E.D. Mich., Sep. 28, 2006).....	21, 32
Egger v. Phillips, 710 F.2d 292, 311 n. 19 (7th Cir.), cert. denied, 464 U.S. 918, 104 S.Ct. 284, 78 L.Ed.2d 262 (1983)	49
Farm Bureau Mut. Auto Ins. Co. v. Hammer, 83 F.Supp. 383, 386 (W.D.Va.), rev'd. on other grounds, 177 F.2d 793 (4th Cir.1949), cert. denied, 339 U.S. 914, 70 S.Ct. 575, 94 L.Ed. 1339 (1950)	49
Fitzgerald v. CBS Broad., Inc., 491 F. Supp. 2d 177, 183 (D. Mass. 2007 . 4	
Fort Worth and Denver Railway Company v. Wayne Harris, 230 F.2d 680; 1956 U.S. App.)	40
Gross v. FBL.....	3
Harrington v. City of Chicago, 433 F.3d 542, 546 (7th Cir. 2006)	40

Hawn v. Exec. Jet Mgmt., Inc., 615 F.3d 1151, 1155 (9 th Cir. 2010) (quoting Chuang v. Univ. of Cal. Davis, Bd. of Trs., 225 F.3d 1155, 1123-24 (9 th Cir. 2000)	6
Hutto v. Finney, 437 U.S. 678, 689, N. 14 PP. 9-12". (Citing Chambers v. Nasco, Inc., 501 U.S. 32 (1991)).....	21, 32
Id. (citing Henry v. Sneiders, 490 F.2d 315, 318 (9th Cir. 1974)).....	21, 31
Id. at 653 (citing Vodusek, 71 F.3d at 156).....	21, 55
In Re Terrorist Bombings, 552 F.3d at 147	21, 55
John Mohr & Sons v. Apex Terminal Warehouses, Inc., 422 F.2d 638 (7th Cir. 1970)	42
Johnson v. Reily, 82 U.S. App.D.C. 6, 160F.2d 249	39, 41
Leon, 464 F.3d at 959	21, 33, 54
Luick v. Graybar Electric Company, Inc., 473 F.2d 1360 (8th Cir. 1973) ..	42
Mangan v. Broderick and Bascom Rope Company, 351 F.2d 24 (7th Cir. 1965).....	41
Maymi v. Puerto Rico Ports Authority, 515 F. 3d 20 Court of Appeals, 1 st Circuit 2008. Citing from McCarthy v. Northwest Airlines, Inc., 56 F. 3d 313 - Court of Appeals, 1st Circuit 1995.....	4
McDonnell Douglas	52
Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 (10th Cir.1997).....	21, 22, 53
Morrison v. Walker, 404 F.2d 1046	21, 49
Noonan v. Caledonia v. Gold Mining Co., 1887, 121 U.S. 393, 7 S.Ct. 911, 915, 30 L.Ed. 1061	41
O'Campo v. Hardisty, 262 F.2d 621 (9th Cir. 1958)	42
Pfeil v. Rogers, 757 F.2d 850, 859 (7th Cir. 1985) (emphasis added)	4
Residential Funding Corp., 306 F.3d at 108 (quoting Byrnie, 243 F.3d at 109).....	21, 55
Rogers v. T.J. Samson Cmty. Hosp., 276 F.3d 228, 232 (6th Cir. 2002) .	21, 56
Shapiro, Bernstein & Company, Inc. v. "Log Cabin Club Ass'n.", 365 F. Supp. 325(N.D.W.Va.1973)	42
Shelley v. Geren, No. 10-35014 (9 th Cir 2010)	21, 51
Shelly v. Geren, No. 10-35014, U.S. Ct. of Appeals, Ninth Circuit	52
Smith v. City of Allentown, 589 F.3d 684, 691 (3d Cir 2009)	6
Telectron, Inc., v. Overhead Door Corp., 116 F.R.D. 107)	22, 54
Tusing v. Des Moines Cmty. Sch. Dist., 639 F.3d 507, 515 n.3 (8 th Cir. 2011).....	6

Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp., 982 F.2d 363, 368 (9th Cir. 1992)	22, 31
United States v. Shaffer Equip. Co., 11 F.3d 450, 462 (4th Cir. 1993)	22, 33
Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 580 ..	22, 32
Velez v. Thermo King Day P.R., Inc., 585 F.3d 441, 446-47 (1 st Cir. 2009) 6, 52	
Welsh v. United States, 844 F.2d 1239, 1246 (6 th Cir. 1988).....	22, 34
Welsh v. United States, 844 F.2d 1239, 1246 (6th Cir. 1988) (overruled on other grounds by Adkins, 554 F.3d 650); Adkins, 554 F.3d at 652-53 .	22, 55
Welsh, 844 F.2d at 1248)). (citing Beaven v. U.S. Dept., of Justice, 622 F.3d 540)	22, 56
Weva v. Belco, 68 F.R.D. 663.....	42
Wm. T. Thompson Co. v. General Nutrition Corp., 593 F. Supp. 1443, 1456 (C.D. Calif. 1984)	57
Woolner v. Flair Comm'cns Agency, Inc., 2005 U.S. Dist. LEXIS 42489, at *1 (N.D. Ill. Jan. 31, 2005).....	40

STATUTES

28 U.S.C. § 1746	4
28 U.S.C.A. § 1746 (West Supp.1984)	49
29 CFR § 1627.3(b)(1).....	9, 29, 31
29 U.S.C. § 216(b)	57
29 U.S.C. § 626	
U.S.C.S. § 1746.....	48

OTHER AUTHORITIES

8 Wright & Miller, Federal Practice and Procedure § 2259 (1970)	42
Accord, <i>Shapiro, Bernstein & Company, Inc., supra</i> , see Wright, <i>supra</i> , § 2264, and 6 Moore's Federal Practice, para. 56.11 [1.5]	44
BLACK'S LAW DICTIONARY 1437 (8th ed. 2004)	33
Income loss persists Long After Layoffs, Till von Wachter, Columbia University.....	17
Jamie S. Gorelick et al., Destruction of Evidence (1989)	33
Maria Perez Crist, Preserving the Duty to Preserve	11
Never Say Die: The Myth and Marketing of the New Old Age by Susan Jacoby.....	17

TABLE OF AUTHORITIES**REPLY MEMORANDUM TO DEFENDANT OPPOSITION TO PLAINTIFF
MOTION FOR SUMMARY JUDGMENT AND, PLAINTIFF OPPOSITION
MEMORANDUM TO DEFENDANT CROSS MOTION FOR SUMMARY
JUDGMENT, DKT. NO. 127**

42 U.S.C. § 2000e-16(a)	32
Adelman-Trebley, 859 F.2d at 521	44
Austral-Pacific Fertilizers v. Cooper Indus., 1997 U.S. App. LEXIS 5383 ((6 th Cir. 1997))	41
Balderston v. Fairbanks Morse Engine Div. of Coltec Indust., 328 F.3d 309, 321-22 (7 th Cir. 2003).....	15
Board of Trustees of Keene State College v. Sweeney, 439 U.S. 24, 24-25 & nn.1 & 2, 99 S. Ct. 295, 295-296 & nn.1 & 2, 58 L. Ed. 2d 216 (1978) (failure to promote)	33
Brown v. Ford Motor Co., 494 F.2d 418 (10th Cir. 1974).....	44
Burke v Gould, 286 F.3d 513, 517 (D.C. Cir.2002) (quoting Gardels v. CIA 637 F.2d 770, 773 (D.C. Cir.1980)).....	5
Carmichael v. Birmingham Saw Works, 738 F.2d 1126, 1133 (11th Cir. 1984).....	17
Carmichael v. Birmingham Saw Works, 738 F.2d 1126, 1133 (11th Cir. 1984)).....	17
Community of Roquefort v. William Faehndrich, Inc., 303 F.2d 494, 498 (2d Cir. 1962)	3
Dempsey v. Omaha	16
Easton Sports, Inc. v. Warrior Lacrosse, Inc., 2006 U.S. Dist. LEXIS 70214 (E.D. Mich., Sep. 28, 2006).....	41
Furnco, 438 U.S. at 576-77 & n.8, 98 S. Ct. at 2949 & n.8 (failure to hire). 33	
Gates v. Georgia-Pacific Corporation, 326 F.Supp. 397 (D.C.D.Or.1970). 12	
Grant Burget v. Geary Securities, Inc., Case No. Civ-09-1015-M	28
Grant v. Bethlehem Steel, 635 F.2d 1007, 1017 (2d Cir. 1980);.....	17
Gusman v Unisys Corporation, 986 F.2d 1146, (7 th Cir).....	31
Hodgson v. First Federal Savings	31
Hodgson, Secretary of Labor v. First Federal Savings And Loan Association of Broward County, Florida, 455 F.2d 818	11
Hughes v. Vanderbilt Univ., 215 F.3d 543, 549 (6th Cir.2000)	11
In re Greenfield, 65 Fed. Appx. 549 (6th Cir. 2003).....	4
Jaramillo v. Colo. Judicial Dep't, 427 F.3d 1303, 1308 (10th Cir. 2005)	28

Jones, 2010 U.S. App. LEXIS 17676, 2010 WL 3310226, at *7	28
Knotts v. Black & Decker, Inc., 204 F.Supp. 2d 1029	10
Kornegay v. Cottingham, 120 F.3d, 395 (3d Cir. 1997).....	46
LaLonde v. Eissner, 405 Mass. 207, 209 (1989)	11
Lathram v. Snow, 336 F.3d 1085; 357 U.S. App. D.C. 413.....	12, 25
Lujan v. National Wildlife Federation, 497 U.S. 871, 888-89, 110 S.Ct. 3177, 3188-89, 111 L.Ed.2d 695 (1990).....	11
McDonnell Douglas Corp. v Green (1973) 411 US 792, 36 L Ed 2d 668, 93 S Ct 1817	45
McDonnell Douglas, 411 U.S. at 802, 93 S. Ct. at 1824	33
Moore v. Ohio River Co., 960 F.2d 149, 1992 WL 78104, *3 (6th Cir.1992)11	
Muniz v. Beto, 434 F.2d 697 (CA5, 1970).....	11
Norris v. Alabama, 294 U.S. 587, 55 S.Ct. 579, 79 L.Ed. 1074 (1935).....	11
Page v. Bolger, 645 F.2d 227; 1981 U.S. App	32
Parham v. Southwestern Bell Telephone Company, 433 F.2d 421 (CA8, 1970).....	31
Pederson v. Time, Inc., supra at 17.....	11
Peters v. Lincoln Elec. Co., 285 F.3d 456, 27 Employee Benefits Cas. (BNA) 2044, 88 Fair Empl. Prac. Cas. (BNA) 639 (6th Cir. 2002).....	42
Pressley v. Haegar, 977 F.2d 295, 297 (7th Cir. 1992) ("An empty head means no discrimination."), quoted in Silvera v. Orange County Sch. Bd., 244 F.3d 1253, 1262 (11th Cir. 2001).....	17
Pyramid Securities v. IB Resolution, Inc., 924 F.2d 1114	43
Reeves at 148; see Aka, 156 F.3d at 1290.....	13
Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133; 120 S. Ct. 2097	45
Reeves, 530 U.S. at 147	12
Reid v. Sears, Roebuck & Co., 7990 F.2d 453, 460 (6 th Cir.1986) (citing Biechele v. Cedar Point, Inc., 747 F.2d 209, 215 (6 th Cir.1984))	11
SEC v. Banner Fund Intern., 211 F.3d 602 , 616 (D.C. Cir.2000).....	5
Thompson v. Evening Star Newspaper Co., 129 U.S.App.D.C. 299, 394 F.2d 774 (1968)	44
Wagner v. Gray, 872 F.2d 142	16
Walker v. Prudential Property and Cas. Ins. Co., 286 F.3d 1270, 1275 (11th Cir. 2002).....	17
Wanger v. G.A. Gray Co., 872 F.2d 142 (6th Cir. 1989)	16
Weeks v. Southern Bell Telephone and Telegraph Company, 408 F.2d 228 (CA5, 1969).....	11

Whalen v. Unit Rig, Inc., 974 F.2d 1248, 1251-52 (10th Cir. 1992).....	16
Zoby v. American Fidelity Co., 242 F.2d 76, 80 (4th Cir. 1957)	44

STATUTES

29 USCS 621 et seq.....	46
-------------------------	----

OTHER AUTHORITIES

James T. Killelea, Spoliation of Evidence: Proposals for New York State .	41
---	----

TABLE OF AUTHORITIES

APPELLANT BRIEF

244 U. S. App. D. C., at 163, 756 F.2d, at 184	8
<i>Adelman-Tremblay v. Jewel Companies, Inc.</i> , 859 F.2d 517, 520-21 (7th Cir.1988).....	20
<i>Adelman-Tremblay</i>, 859 F.2d at 521	21
<i>Adickes v. S. H. Kress & Co.</i> , 398 U. S. 144, 159 (1970)	8
<i>Alexander v. Robertson</i> , 882 F.2d 421, 424 (9th Cir.1989).....	32
<i>Allstate Ins. Co. v. Sunbeam Corp.</i> , 53 F.3d 804, 806-07 (7th Cir.1995).....	60
<i>Ambach v Bell</i> , 686 F. 2d 274	4
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 257, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)	21
<i>Anderson v. Liberty Lobby, Inc.</i> , ante, at 250	5
<i>Anderson</i> , 477 U.S. at 250-51	68
<i>Anderson</i> , 477 U.S. at 255	67
<i>Aoude v. Mobile Oil Corp.</i> , 892 F. 2d 1115, 1118 (1 st Cir. 1989)	32, 65, 66
<i>Arrington v. *United States</i> , 473 F.3d 329, 338 (D.C.Cir.2006).....	9
<i>Austral-Pacific Fertilizers v. Cooper Indus.</i> , 1997 U.S. App. LEXIS 5383 ((6th Cir. 1997).....	27
<i>Baliotis</i> , 870F.Supp. at 1290.....	27
<i>Beaven v. US Dept. of Justice</i> , 622 F. 3d 540 (6th Cir. 2010)	30
<i>Beaven v. US Dept. Of Justice</i> , 622 F. 3d 540, (6th Cir. 2010).....	58
<i>Beech Aircraft Corp. v. Rainey</i> , 488 U. S. 153, 163 (1988).....	40
<i>Bonds v. District of Columbia</i> , 320 U.S. App. D.C. 138, 93 F.3d 801, 807 (D.C. Cir. 1996).....	60
<i>Brady</i> 373 U.S. at 87	37
<i>Brady v. Office of Sergeant at Arms</i> , 520 F.3d 490, 494 (D.C. Cir. 2008).” <i>Hicks v. Gotbaum</i> , 828 F. Supp. 2d 152, 160 (D.D.C. 2011)	52
<i>Burke v. Gould</i> , 351 U.S. App. D.C. 1, 286 F.3d 513, 519 (D.C. Cir. 2002)	5
<i>Byrnie v Town of Cromwell, Bd. of Educ.</i> , 243 F.3d 93 [2001	63
<i>Campbell Indus. v. M/V Gemini</i> , 619 F.2d 24, 27 (9th Cir.1980)).....	22, 60
<i>Cascade Broadcasting Group Ltd. v. F.C.C.</i> , 822 F.2d 1172 (D.C. Cir. 1987) .	4
<i>Celotex Corp. v. Catrett</i> , 477 US 317	5, 7, 9, 21, 22
<i>Chambers v. NASCO, Inc.</i> , 501 U.S. 32, 43, 111 S.Ct. 2123, 115 L.Ed.2d 27, reh'g denied, 501 U.S. 1269, 112 S.Ct. 12, 115 L.Ed.2d 1097 (1991)	22, 60
<i>Chambers</i> , 501 U.S. at 45, 111 S.Ct. 2123.....	61
<i>Chappell-Johnson v. Blair</i> , No. 06-1074 (D.C.C. 2008)	53

<i>Chappell-Johnson v. Powell</i> , 370 U.S. App. D.C. 162, 440 F.3d 484, 487 (D.C. Cir. 2006) (citing <i>Carter v. George Washington Univ.</i> , 363 U.S. App. D.C. 287, 387 F.3d 872, 878 (D.C. Cir. 2004)).....	53
<i>Chowdhury v. Bair</i> , 680 F. Supp. 2d 176 - Dist. Court, Dist. of Columbia 2010	9
<i>Computer Assoc. Int'l, Inc. v. Am. Fundware, Inc.</i> , 133 F.R.D. 166, 168-70 (D. Colo. 1990)	62
<i>Convertino v. United States Department of Justice, and Jonathan Tukel</i> , No. 11-5133 (D.C. Cir. 2012)	22
<i>Corchado v. Puerto Rico Marine Management, Inc.</i> , 665 F.2d 410, 413 (1st Cir.1981).....	65
<i>D.P. Apparel Corp. v. Roadway Express, Inc.</i> , 736 F.2d 1, 3 (1st Cir.1984) ..	65
<i>Daubert v. Merrell Dow Pharmaceuticals Inc.</i> , 509 US 579	40
<i>Dellums v. Powell</i> , 184 U. S. App. D. C. 339, 566 F. 2d 231 (1977)	64
<i>Easton Sports, Inc. v. Warrior Lacrosse, Inc.</i> , 2006 U.S. Dist. LEXIS 70214 (E.D. Mich., Sep. 28, 2006)	27
<i>Edmond v. U.S. Postal Serv. Gen. Counsel</i> , 949 F.2d 415, 425, 292 U.S. *App. D.C. 240 (D.C. Cir. 1991).....	21
<i>England v. Doyle</i> , 281 F.2d 304, 309 (9th Cir.1960)	32
<i>Farrell v. Automobile Club of Michigan</i> , 870 F.2d 1129, 1131-32 (6th Cir.1989)	20
<i>Galvin v. Eli Lilly & Co.</i> , 488 F.3d 1026, 1030, [*342] 376 U.S. App. D.C. 330 (D.C. Cir. 2007) (quoting <i>Pyramid Sec. Ltd. v. IB Resolution Inc.</i> , 924 F.2d 1114, 1123, 288 U.S. App. D.C. 157 (D.C. Cir. 1991))	10
<i>Galvin</i> , 488 F.3d at 1030	10
<i>Gardels v. CIA</i> , 637 F.2d 770, 773 (D.C.Cir.1980)).....	7
<i>Gardner</i> , 211 F.3d at 1309 (quoting <i>Trakas</i> , 759 F.2d at 188).....	41
<i>Goodyear Tire & Rubber Co.</i> , 167 F.3d at 779	62
<i>Greene v. Dalton</i> , 164 F.3d 671, 675 (D.C.Cir.1999).....	9
<i>Greene</i> , 164 F.3d at 675	9
<i>Gross v. FBL Financial Servs., Inc.</i> , 557 U.S. 167, 177 (2009)	52, 53
<i>Harding v. Gray</i> , 9 F.3d 150, 154 (D.C.Cir.1993)).....	9
<i>Hazel-Atlas Co. v. Hartford Co.</i> , 322 US 238 - Supreme Court 1944.....	66
<i>Henry v. Sneiders</i> , 490 F.2d 315, 318 (9th Cir. 1974))	30
<i>HMG Property</i> , 847 F.2d at 917	66
<i>In re Napster, Inc. Copyright Litigation</i> , 462 F. Supp. 2d 1060 - Dist. Court, ND California 2006	27, 29, 66
<i>International Brotherhood of Teamsters v. United States</i> , 431 U.S. 324, 358 n.44, 52 L. Ed. 2d 396, 97 S. Ct. 1843 (1977).....	59

Jackson v. *Finnegan, Henderson, Farabow, Garrett & Dunner, 101 F.3d 145, 151 (D.C.Cir.1996).....	6
<i>Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner</i> , 101 F.3d 145, 150 (D.C.Cir.1996).....	7
Johnson v. Shinseki, 811 F. Supp. 2d 336, (D.D.C. 2011).....	10
Killelea, supra note 10, at 1052.....	64
<i>Kizas v. Webster</i> , 492 F.Supp. 1135, 1147 n. 42 *(D.D.C.1980), <i>rev'd on other grounds</i> , 707 F.2d 524 (D.C.Cir.1983)	21
Krieger v. US Dept. Of Justice, 562 F. Supp. 2d 14 (D.C. 2008)	5
Lathram v. *Snow, 336 F. 3d 1085.....	58
Leon, 464 F.3d at 959	27
Martin v. Merrell Dow Pharmaceuticals, Inc., 851 F.2d 703, 706 (3d Cir.1988)	20
<i>Martin</i> , 851 F.2d at 706.....	21
McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 36 L. Ed. 2d 668, 93 S. Ct. 1817 (1973).....	52
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792, 802-05 (1973)	52
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)	53
National Ass'n of Radiation Survivors v. Turnage, 115 F.R.D. 543, 556-57 (N.D.Cal. 1987) (Patel, J.)	27
<u><i>National Hockey League v. Metropolitan Hockey Club</i>, 427 U. S. 639 (1976) (<i>per curiam</i>)</u>	64
National Hockey League v. Metropolitan Hockey Club, Inc. , 427 U.S. 639, 643, 96 S.Ct. 2778, 2781, 49 L.Ed. 2d 747 (1976).....	62, 66
Noble 71 Fed. App'x at 69	41
O'Connor v. Consol. Coin Caterers *Corp., 517 U.S. 308, 312 (1996)	57
<i>Oppenheimer Fund, Inc. v. Sanders</i> , 437 U.S. 340, 351 (1978).....	40
Perma Research and Dev. Co. v. Singer Co., 410 F.2d 572, 578 (2d Cir.1969)	20
Pfizer, Inc. v. International Rectifier Corp., 538 F.2d 180, 195 (8th Cir.1976). 32	
Pyramid Secs. Ltd. v. IB Resolution, Inc.....	20
Pyramid Securities v. IB Resolution, Inc., 924 F.2d 1114 (D.C. Cir 1991)	17
Qatar Nat. Bank v. Winmar, Inc., 650 F. Supp. 2d 1 - Dist. Court, Dist. of Columbia 2009.....	5
Radobenko v. Automated Equipment Corp., 520 F.2d 540, 544 (9th Cir.1975)	20
Roadway Express, Inc. v. Piper, 447 US 752	64
Rogers v. T.J. Samson Cmty. Hosp., 276 F.3d 228, 232 (6th Cir. 2002)	59

GLOSSARY OF ABBREVIATIONS

ADEA, Age Discrimination in Employment Act
 DCHRA, District of Columbia Human Rights Act
 HR, Human Resource
 EEOC, Equal Employment Opportunity Commission
 PCAM, Professional Community Association Manager
 CAM, Certified Apartment Manager

JURISDICTIONAL STATEMENT

This is an Appeal to the Appellate Court of the District of Columbia from the District Court of the District of Columbia. The District Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343, and 1345.

Venue in the District of Columbia is appropriate as this is a multijurisdictional case. The act of discrimination took place when petitioner applied for employment in the District of Columbia, State of Maryland and the State of Virginia

STATEMENT OF ISSUES

In an Order dated February 27, 2013, The United States District Court of the District of Columbia denied appellant Motion for Summary Judgment and Granted defendant Cross Motion for Summary Judgment. Defendants do not meet Fed. R. Civ. P. Rule 56(c), Fed. R. Civ P. Rule 56(e), Local Rule 7(h), and the Court's Schedule Order, Dkt. No. 38 Standards for defendant Cross Motion for Summary Judgment to be granted.

STATUTES

29 CFR § 1627.3(b)(1)	23, 26, 61
ADEA.....	23
District of Columbia Human Rights Act (DCHRA), D.C. Code §§ 2.1401.01 et seq	24
FED. R. EVID. 402	4

OTHER AUTHORITIES

7 MOORE'S FEDERAL PRACTICE, § 37A.55 (3d ed. 2011)	64
Crist, <i>supra</i> note 29, at 43.....	65, 67
Daniel Renwick Hodgman, Comment, A Port in the Storm?: The Problematic and Shallow Safe Harbor for Electronic Discovery, 101 NW. U. L. REV. 259, 273 (2007)	68
Killelea, <i>supra</i> note 10, at 1046.....	65

STATEMENT OF FACTS/ARGUMENT

A. Appellant restates, facts on which appellant relies, ¶¶ 1 to 14, appellant Writ of Mandamus, Case No. 13-5054, filed February 5, 2013.

B. Expedited Motion For Stay, Case History from the D.C. Circuit Remand and Reversal of Case, primarily ¶¶ 10 to 33.

C. Appellant March 24, 2014 Motion for Order that discussed the multiple legal issues and cited exhibits that are herewith referenced, accordingly appellant restates in its entirety appellant Motion for Order.

THE LEGAL STANDARD FOR SUMMARY JUDGMENT, FED. R. CIV. P. RULE 56(c) WAS NOT SATISFIED.

1. Appellant restates ¶¶ 1 through 48 of appellant Motion for Summary Reversal and EXHIBIT A referenced.

APPELLANT WAS DENIED DISCOVERY; DISCOVERY WAS INTENTIONALLY WITHHELD, DEFENDANT DESTROYED EVIDENCE, AND FOLLOWING REVERSAL AND REMAND, DEFENDANT REQUESTED AN ADVERSE INFERENCE SANCTION THAT WAS IN PRACTICE GRANTED. APPELLANT WAS SANCTIONED TWO (2) TIMES DESPITE THE D.C. COURT OF APPEALS STATED THAT APPELLANT DISPLAYED NO DIALATORY CONDUCT.

2. Appellant restates ¶¶ 49 through 135 of appellant Motion for Summary Reversal, and EXHIBIT B referenced.

PRIMA FACIE CASE, MERITS IS ESTABLISHED

3. Appellant restates ¶¶ 136 through 163 of appellant Motion for Summary

Reversal, and EXHIBIT B referenced.

DEFAULT JUDGMENT

4. Appellant restates ¶¶ 164 through 194 of appellant Motion for Summary Reversal.

SUMMARY CONCLUSION

5. Appellant restates ¶¶ 195 through 203 of appellant Motion for Summary Reversal.

For the foregoing reasons appellant requests the court reverse the district court order, and grant Default Judgment, and or remand with instruction that default judgment must be granted.

Respectfully submitted,

/s/ Andrea Peterson

September 24, 2014

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CERTIFICATE OF SERVICE

I Andrea Peterson wherewith certify that on September 24, 2014, I served Appellant Brief on defendant counsel, Nancy Delogu and Libby Henninger by CM/ECF service on the U.S. Appellate Court of the D.C. of Columbia system.

/s/ Andrea Peterson

Andrea Peterson

Dated, September 24, 2014